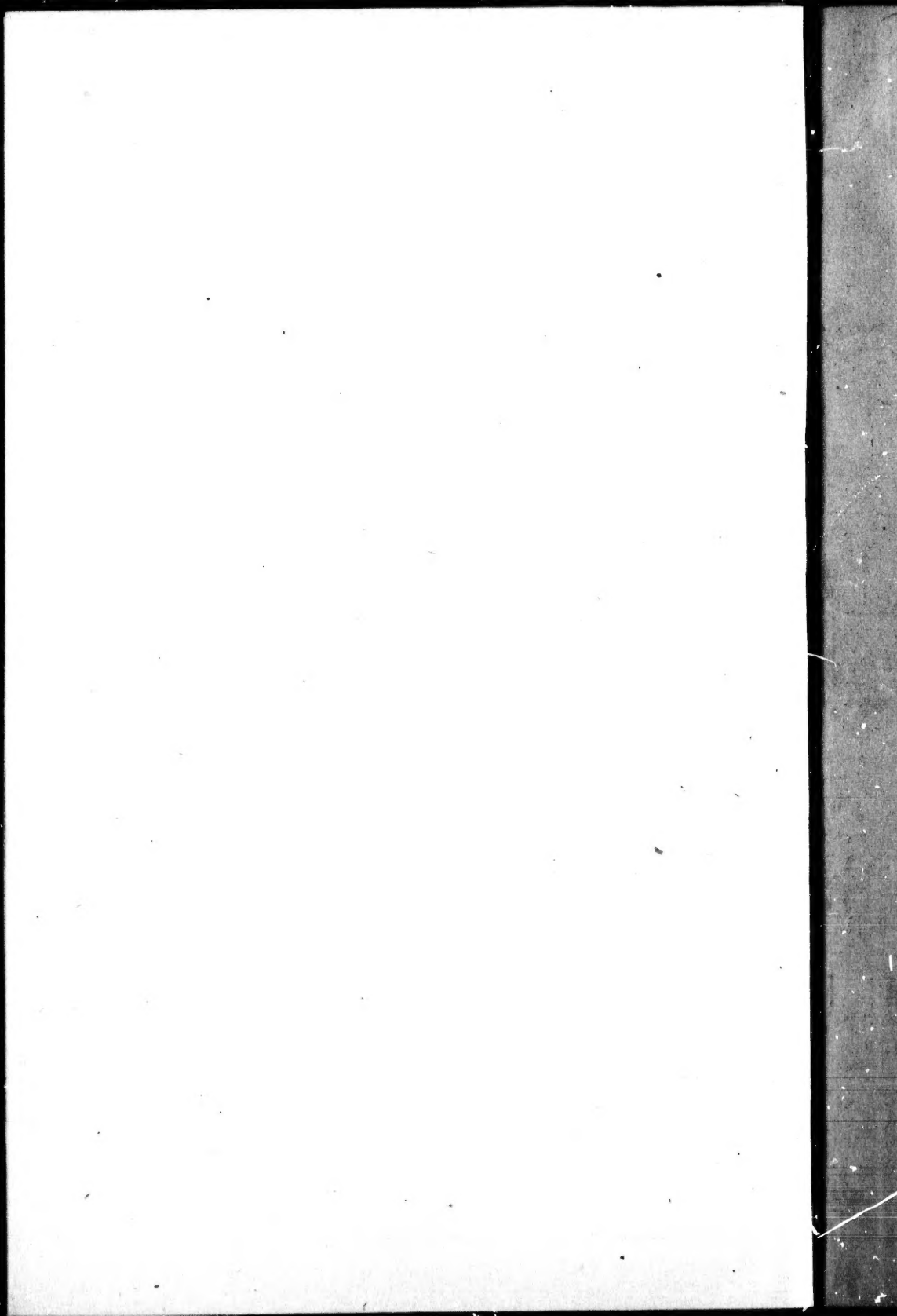




The First Courts and Early Judges
of New Brunswick.

A PAPER

READ BEFORE

The New Brunswick Historical Society.

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The First Courts and Early Judges
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A PAPER

READ BEFORE THE

NEW BRUNSWICK HISTORICAL SOCIETY

BY J. W. LAWRENCE, ESQ., PRESIDENT,

November 25, 1874.

ST. JOHN, N. B. :

J. & A. McMILLAN, PRINTERS, 78 PRINCE WM. STREET.

1875.

THE NEW BRUNSWICK HISTORICAL SOCIETY.

Organized at St. John, November 25th, 1874.

OFFICERS AND MEMBERS.

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HON. WILLIAM JOHNSTON RITCHIE.

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Henry Melick,
Edward Sears,
L. B. Botsford,
Stephen K. Foster.

CONSTITUTION

OF

The New Brunswick Historical Society.

1. NAME.

This Society shall be called THE NEW BRUNSWICK HISTORICAL SOCIETY.

2. OBJECTS.

The objects of this Society shall be the collection and preservation of Books, Pamphlets, Manuscripts and Records, containing historical facts, biographical sketches, and other information of all kinds, directly or indirectly connected with the history of the Province of New Brunswick, and the publication of such transactions as the Society may deem advisable.

3. MEMBERS.

This Society shall consist of three classes of members: (1) Contributing members, who shall not at any one time exceed the number of forty; (2) Honorary members; (3) Corresponding members, who shall not be residents of the Province.

4. MEETINGS.

The regular meetings of the Society shall be held ^{usually} ~~monthly~~ on the last ~~Tuesday~~ ^{Thursday} of each ~~month~~ ^{year}, at such time and place as may from time to time be decided upon by the Society. The meetings may be adjourned from time to time as the Society shall deem advisable.

5. FEES.

Each contributing member upon his admission shall pay into the funds of the Society the sum of one dollar, and the sum of two dollars thereafter annually, to create a fund for the benefit of the Society. Any contributing member, upon payment of the sum of twenty dollars, shall become a Life member of the Society, and shall thereafter be relieved from payment of annual fees. Honorary and Corresponding members shall not be liable for any fees.

6. OFFICERS.

There shall be chosen annually, at the regular meeting in November in each year, from among the Contributing members, a President, ^{two} Vice-President, a Secretary, Treasurer, a Corresponding Secretary, a Librarian, and a Standing Committee of ~~three~~ ^{five} who, with the officers, shall form the Council of the Society.

7. PATRONS.

There shall be a Patron of the said Society, to be elected by the contributing members.

8. CHANGE.

* This Constitution may be altered or amended at any regular monthly meeting of the Society, by a two-third vote of the Contributing members present, provided two months' previous notice in writing to that effect has been handed in to the Secretary-Treasurer at a regular meeting of the Society, stating the nature of such alteration or amendment.

After the organization of "The New Brunswick Historical Society," at a meeting held in the Directors' Room of the Mechanics' Institute, in the City of Saint John, on Wednesday, November 25th, 1874, the President read a paper on "*The First Courts and Early Judges of New Brunswick*," which paper it was, on motion, unanimously resolved should be published as the Society's first contribution to the Historical Literature of the Province.

THE FIRST COURTS

AND

EARLY JUDGES OF NEW BRUNSWICK.

READ BEFORE THE NEW BRUNSWICK HISTORICAL SOCIETY,
NOVEMBER 25, 1874.

By J. W. LAWRENCE, PRESIDENT.

IN organizing the Historical Society to-night, our object is to supply one of New Brunswick's wants. At the preliminary meeting, held a few weeks ago, you delegated to me authority to fix the time for organization. I should have called you together before, but my desire was to have an historic day for that event. The 22nd of this month—the anniversary of the formation of the Government of this Province—is the one I should have preferred. Its falling on a Sunday necessitated the adoption of another day. I have, therefore, chosen this, the 25th November, one of the Red Letter days in the New Brunswick calendar, for on it, ninety years ago, our Supreme Court of Judicature was established.

The paper before me I offer as the first contribution to our Historical Literature. To ourselves it may possess little that is new; but to those of a generation hence it may be otherwise, for historic papers, often like the works of the old masters or ancient coins, grow in value with age.

The Province of New Brunswick at one time was the County of Sunbury, Nova Scotia. It had two members—Charles Morris, jr., Deputy Surveyor General, and James Simonds, of Portland Point. Mr. Morris must have been a gentleman of much influence in his day, for in 1761 he represented Kings in the second Parliament of Nova Scotia, and to the third was again returned for the same

place, and also for the township of Truro. In 1770 he was elected for Sunbury. This was the fourth Parliament of Nova Scotia, and it continued for fourteen years. Mr. Morris was a member to the death of his father, the Hon. Charles Morris, in 1781, Surveyor General and Chief Justice of Nova Scotia.

In 1774, in his report, the Hon. Charles Morris wrote: "Above the present settlements on the River St. John, and on the other rivers flowing into it, are great quantities of pine trees, at present fit for masts, and great quantities of others growing into that state, that, being so far inland, protected by growth of other timber and by hills, and remote from those violent gales which infest the sea-coast, will be the most effectual reserve for such purposes. I am, therefore, of opinion, that a reserve of all the lands on the River St. John above the settlements, for the whole course of the river—at least twenty-five miles on each side—will be the most advantageous reserve to the Crown of any lands in the Province, especially as the river is navigable for boats and rafting of masts the whole course of it; as also for the rafting of masts in the several branches of it; and in this tract is contained a black spruce, fit for yards and topmasts, and other timber fit for shipbuilding."

Chief Justice Morris was succeeded in the office of Surveyor General by his son, who was afterwards appointed to a seat in the Council, and at his death in 1802 was also Registrar of the Court of Admiralty.

In the representation of Sunbury in the Nova Scotia Parliament, Mr. Morris was succeeded by William Davidson, Esq., a native of Scotland, and the first settler on the Miramichi River. In 1764 he obtained a grant of one hundred thousand acres on its south-west branch. Mr. Davidson was a representative from Northumberland in the first Parliament of New Brunswick. During the revolutionary war he sustained great losses at the hands of the Indians and from American privateers.

The township of Sackville, at the head of the Bay, had also two representatives—Samuel Rogers and Robert Foster. For some years members had no pay; when the separation took place, those from the country were receiving ten shillings per day.

Sunbury, on the 16th August, 1784, was separated from Nova Scotia, and made a Government and Province called New Brunswick.

THE FIRST GOVERNOR OF NEW BRUNSWICK.

Thomas Carleton, Esq., was the first Governor of New Brunswick. In the month of October, 1784, he arrived at Halifax, with his family, in the ship *St. Lawrence*, after a passage of fifty-six days, from London. On Sunday afternoon, November 21st, he arrived at Parr Town from Digby in the sloop *Ranger*, Captain Cornelius Hatfield, after a passage of six hours. As the vessel passed up the harbor, a salute of seventeen guns was fired from Lower Cove, and on the landing of the Governor a like number from Fort Howe. He was then escorted to the house of Mr. George Leonard, corner of Union and Dock streets (York Point), which had been prepared for his reception. On Monday his commission was read, after which he was sworn in as Captain-General and Commander-in-Chief. On the same day, George Duncan Ludlow, James Putnam, Abijah Willard, Gabriel G. Ludlow, Isaac Allan, William Hazen, and Jonathan Odell were sworn in members of His Majesty's Council, at which time its first meeting was held. Five days after, Gilfred Studholm took his seat, and on December 4th, Edward Winslow. The number was increased July 18th, by the appointment of Daniel Bliss, and on 2nd July, 1786, of Joshua Upham.

Thomas Carleton held the office of Captain-General, Governor and Commander-in-Chief to May 20th, 1786, when Sir Guy Carleton, afterwards Lord Dorchester, was appointed Governor of Canada, Nova Scotia and New Brunswick, with Col. Carleton as Lieut. Governor of this Province, an office he held to his death in February, 1817, a period of thirty-three years, nineteen of which he spent in New Brunswick and fourteen in England. In the war of the revolution he was Colonel of the 29th Regiment, and in October, 1786, was appointed a Brigadier-General and Commander of the forces in the Lower Colonies.

February 18th, 1785, Governor Carleton selected St. Anne's Point (now Fredericton) for the seat of Government: the chief reason for its removal from St. John was, safety in the event of war, the settlement of the country, and, no doubt, because numbers of the grantees of land in York were half-pay officers. Thirteen Provincial Regiments were disbanded in 1783, and many of the officers and men drew land in that section. The first representatives of York in the Legislature were all half-pay officers.

Governor Carleton owned the land on which Government House

stands, and there he built his mansion. In 1816 it was purchased by the Province from his agent, Col. Harris W. Hales, for £3,500. The adjoining field belonged to the College; for it Governor Carleton paid a rental of £6 1s. 8d. This was bought at the same time for £150.

A portion of the old Government House was destroyed by fire in 1825. The part saved was purchased by Chief Justice Saunders and removed to Sunbury street and rebuilt: it was afterwards sold to Sheriff McLean.

The present Government House was opened with a Ball on New Year's Eve, 1828: its first occupant was Sir Howard Douglas. It is said, the grape vine on its arbor was planted by Governor Carleton.

THE FIRST COMMONERS OF NEW BRUNSWICK.

The first session of the first Parliament of New Brunswick was opened by Governor Carleton at the City of St. John, January 3rd, 1786, in the "Mallard House," north side of King street, on the second lot below Germain, which is to-day the Bonsall property. The following were the members:

ST. JOHN COUNTY—

William Pagan,
Ward Chipman,
Jonathan Bliss,
Christopher Billop.

* WESTMORLAND—

Amos Botsford,
Charles Dixon,
Samuel Gay, *April 93 years*
Andrew Kinnear.

KINGS—

John Coffin,
Ebenezer Foster.

QUEENS—

Samuel Dickinson,
John Yeomans.

YORK—

Daniel Murray,
Isaac Atwood,
Daniel Lyman,
Edward Stelle.

SUNBURY—

William Hubbard,
Richard Vandeburgh.

NORTHUMBERLAND—

Elias Hardy,
William Davidson.

CHARLOTTE—

William Payne,
James Campble,
Robert Pagan,
Peter Clinch.

CITY OF ST. JOHN—

Stanton Haza,
John McGeorge.

SPEAKER—

Amos Botsford.

CLERK—

William Paine.

Of the twenty-six members of the first House, there is one only to whom I shall refer. Elias Hardy, although a representative from Northumberland, was a resident of St. John. At a public meeting at Parr Town, in June, 1784, Mr. Hardy was charged with being employed by the Governor of Nova Scotia to raise

In Parliament, Samuel Gay died Jan 21 1847 in his 93 years

objections to the partition of the Province. This charge he denied on oath. At the election of the second Parliament of New Brunswick, he was returned for the City of St. John. He was born in London, and there studied law. Of the early Bar of New Brunswick, he was one of the ablest. In the first civil cause tried in the Province he was retained, and in the trial of General Benedict Arnold, against Monson Hoyt, for defamation of character, he was counsel for defendant. The plaintiff's lawyers were Bliss and Chipman. The jury awarded Arnold *2s. 6d.* damages.

Mr. Hardy was the second Common Clerk of St. John, an office he held to his death in 1798; at this time he resided in King street, where Logan & Lindsay's store stands. Mr. Hardy's family removed to the United States, and in 1820 were living in Lansingburg, New York. Mrs. Hardy was the daughter of Dr. Peter Huggerford, Surgeon in the Loyal American Regiment, raised by Col. Beverly Robinson. The Doctor was one of the grantees of Parr Town, and drew the lot now owned by John B. Gaynor, Charlotte street.

As a Governor, Thomas Carleton was greatly respected by the people. Although entitled to a fee on all grants issued to the Loyalists, he never exacted one. Many years ago, on the floor of the House, a member said: "The name of Carleton implied everything that was HONORABLE."

During the interval between his leaving New Brunswick, in October, 1803, and February, 1817, when General George Stracy Smyth was sworn in as the second Lieut. Governor, there were no less than eleven Presidents and Commanders-in-Chief. The two first were the Hon. Gabriel G. Ludlow and the Hon. Edward Winslow; the remaining nine were military gentlemen. Two died in office—Mr. Ludlow and General Balfour; tablets to their memory were placed in the Parish Church of Fredericton by the Legislature.

At the formation of the Government, the rule was, as in Nova Scotia, that in the event of the death of the Governor, or his absence from the Province, the senior member of the Council (not being Chief Justice) should assume the Government. The prospect of war with the United States in 1808 led the British Government to depart from it, and for the Commandant of the Garrison to take the office. Consequently, on the 24th May of that year, General Hunter was sworn in as President and Com-

mandar-in-Chief, with instructions that in the event of absence, the officer next in command should take his place. This, to the members of the Council, was far from pleasing; for in 1812, and again five years later, they addressed the British Government on the subject; before the last was received at the Colonial Office, Governor Carleton died, and General Smyth, then President of the Province, had been appointed, with instructions that, in the event of absence or death, the senior member of Council should assume the Government, as at first.

It would be interesting to trace the history of the gentlemen who held the office of Governor, and of those who administered the Government during the first half century of the Province. Such is not my intention; I leave that for another time, and for another's pen. It is our first Courts and our early Judges that now claim our attention; for on this day, ninety years ago, THE SUPREME COURT OF NEW BRUNSWICK WAS ESTABLISHED. The day was already historic; for on it, in 1783, the last of the Loyalists left New York—the flag of England floating that day for the last time from the Battery. The Loyalists left the “British Ensign” flying, having cut the halyards and greased the flag-staff. The day is called “Evacuation Day.”

THE FIRST JUDGES.

On Thursday, the 25th November, 1784, at Parr Town, George Duncan Ludlow was sworn in as the first Chief Justice of New Brunswick, with James Putnam, Isaac Allan and Joshua Upham as Assistant Justices. For seventy years the number of Judges of the Supreme Court were the same. The Hon. Neville Parker, in 1838, was made Master of the Rolls, which office he held to 1854, when it was abolished, and Mr. Parker was legislated to the Bench (May 1st) as a fifth Judge of the Supreme Court.

The question of precedence at once arose, as the new Judge claimed rank next to the Chief Justice, on the ground that the Master of Rolls was higher than an Assistant Justice. In this he was right; for, on the 24th August of the same year, a mandamus under the sign manual was issued, appointing him a Puisne Judge, with rank next to the Chief Justice, upon which a commission was issued under the great seal of the Province, August 31st, appointing him as aforesaid. The office of Master of Rolls was abolished consequent on the report of the Commissioners appointed to codify

the laws, but against the opinion of the three Judges and the occupant of the office.

THE FIRST MEETING OF THE SUPREME COURTS.

The first Courts were held at Parr Town, in the building on lot No. 121 Germain street, then used as the Episcopal Church. After the opening of "Trinity" on Christmas Day, 1791, the Methodists, for several years, used it, followed by the Baptists. It was in this place the Common Council at first held their meetings. The Court Room in the City Hall, Market Square, was not used until the year 1798. The last Court held there was in 1829.

Before the erection of a gaol, the Block House at Fort Howe was used for prisoners; the spot where it stood can be seen to-day. Midway between it and where the Barracks stood, is the old well, from which William Cobbet, of the 54th Regt., in 1785, slaked his thirst; it was in its neighborhood he first met the sergeant's daughter, who became his wife.

The Supreme Court was opened for the first time in New Brunswick at Parr Town, on Tuesday, February 1st, 1785—the Hon. George D. Ludlow and the Hon. James Putnam on the Bench. Proclamation made and Court opened in form, when the commissions were openly read, under the great seal of the Province of New Brunswick, appointing the Hon. George D. Ludlow, Chief Justice, and the Hon. James Putnam second Justice, and Ward Chipman, Attorney General. Colin Campbell's commission was read, and was afterwards sworn in as Clerk of the Court.

THE FIRST GRAND JURY.

Richard Lightfoot,	Munson Jarvis,
John Kirk,	John Boggs,
Francis Deveber,	Oliver Arnold,
John Camp,	Caleb Howe,
William Harding,	David Melville,
John Colville,	John Ryan,
Isaac Bell,	Thomas Mallard,
Henry Thomas,	Richard Bonsall,
John Hazen,	James Ketchum,
John Smith,	Luke D. Thornton.
Anthony Narraway,	

February 3rd, the Grand Jury found a "true bill" against Nancy Mosley for the murder of John Mosley. On the same day

the prisoner was arraigned and tried, when, after a charge from the Chief Justice, the jury retired.

THE FIRST PETIT JURY.

Frederic Devoe,	Casper Doherty,
George Wilson,	James Picket,
Abel Flewelling,	John Cooke,
Samuel Tilley,	James Suvener,
John Wiggins,	Jesse Marchant,
Forbes Newton,	Jeremiah Worden.

On returning to Court, they brought in a verdict of manslaughter against the prisoner, Nancy Mosley.

On the same day, Michael and Abraham Mings (mulattoes) were arraigned on two counts—one of burglary, and the other of burglary with intent to personal violence—to which they pleaded not guilty. The Chief Justice charged the jury, after which they withdrew, with Abraham Carlisle, Constable. On returning into Court, through their foreman, said they find the said Michael and Abraham Mings guilty of the burglary as charged in the first count of the indictment, and the jury do further recommend the said Abraham Mings for mercy.

On the 4th February, Peter A. Korman was put on trial and found guilty of highway robbery, and William Thatcher of grand larceny.

On the day following (Saturday), Nancy Mosley was brought into Court and placed at the Bar; she prayed the benefit of the Clergy, which being granted, she was sentenced to be branded in open Court, with the letter M, in the brawn of the left thumb, and discharged.

On the same day, the first capital sentences were pronounced. The prisoners were Peter A. Korman, Abraham Mings, Michael Mings, and William Thatcher. They were brought to the Bar, and were asked if they had anything to say why judgment of death should not pass against them. Then the Chief Justice, after exhorting them, proceeded to pass sentence against the four prisoners, which is that they be taken from hence to the place from whence they came, and from thence to the place of execution, on Friday sennight, between the hours of eleven and one o'clock, where they are severally to be hanged by the neck until they are dead.

Three days after, a meeting of Council was held, when the case

of the four prisoners was taken up. A pardon was ordered for William Thatcher, convicted of grand larceny, and for Abraham Mings, convicted of burglary, conditional on their leaving, and never after found in the Province. On the two other prisoners, sentence must have been carried out. The Sheriff at this time was William Sandford Oliver, son of the last Lieut. Governor of Massachusetts Colony, appointed by the Crown.

The spot where the early executions took place was on the high land to the eastward of Fort Howe, overlooking the Mill Pond; it was called "Gallows Hill."

The first sentence carried out in New Brunswick was on Nancy Mosley; it must not have been regarded as a severe one, for at the session of 1789 the following was enacted:

"Whereas, The punishment of burning in the hand, when any person is convicted of felony, within the benefit of the Clergy, is often disregarded and ineffectual;

Be it enacted by the Lieutenant Governor, Council and Assembly: That from and after the passing of this Act, when any person shall be lawfully convicted of any felony within the benefit of the Clergy, for which he or she may be liable to be burned or marked in the brawn of the left thumb; it shall and may be lawful for the Court, if thought fit, instead of such burning or marking, to impose on such offender such pecuniary fine as to the Court shall seem meet; or otherwise it shall be lawful, instead of such burning and marking in any of the cases aforesaid, except in the case of manslaughter, to order and adjudge that such offender shall be once or oftener, but not more than three times, either publicly or privately whipped."

THE FIRST CIVIL TRIAL

Was held at St. John, October 5th, 1785—Chief Justice Ludlow, with Justices Putnam and Allan, on the Bench. Alexander Hackett, plaintiff, Thomas Hanford and Bradford Gilbert, defendants. William Wylie and Elias Hardy for plaintiffs, and Amos Botsford, with Ward Chipman, for defendants. The jury was—

John Linton,	Kenneth McKenzie,
James Clarke,	Thomas Thomas,
John Kennedy,	John Sharp,
John Marston,	William Ellison,
Andrew Bowman,	Andrew Rogers,
Samuel Dodge,	Elias Skidmon.

The Chief Justice charged the jury, when, through John Linton, their foreman, they brought in a verdict for plaintiff, with damages assessed at £12 10s.

February 11th, 1788, the trial took place of *The King vs. Pompey*, a negro. An indictment found for assault and battery on John Peterson.

On July 25th, 1789, the following civil action was before Court : Patrick, a negro man, and Prince, a negro man, *vs.* Ebenezer Brown. On motion of Mr. Campbell, ordered that judgment of *non pros* go against the plaintiffs for not declaring.

THE EARLY JUDGES.

HON. GEORGE DUNCAN LUDLOW.

The birthplace of Mr. Ludlow was in the Province of New York. In his younger days he was apprenticed to an apothecary, having early shown a taste for chemical and other scientific pursuits. Notwithstanding this, and against the advice of friends, he commenced the study of law; the wisdom of his choice was soon shown, for, on the completion of his studies, success immediately followed. To judgment and skill he added fluency of speech; the result was, a rapid rise in the profession. When the war of the revolution broke out, Mr. Ludlow was in his forty-first year, and had attained the rank of Judge of the Supreme Court. As the British, during the greater part of the contest, held possession of New York, he retained his office throughout the war, and at its close, with his family, came to this country. Mr. Ludlow was one of the original grantees, and, with his brother Gabriel, drew six lots on the Carleton side of the harbor, in the rear of where St. George's Church now stands. There the two brothers built a house, and in it resided. It was afterwards long known as the "Old Government House." For in it Gabriel G. Ludlow, who was President and Commander-in-Chief from 1803 to his death, five years after, resided.

When Fredericton was selected for the seat of Government, the Chief Justice drew a tract of land in the Parish of Kingsclear, five miles up the river, which he called Springhill, where he resided to his death. At the time of his appointment to the Bench, as the first Chief Justice of New Brunswick, he was in his fiftieth year. Chief Justice Ludlow was a gentleman of medium size, and died November 30th, 1808, at the age of seventy-four, having held the office of Chief Justice and President of the Council for nearly twenty-five years. In framing the early laws of the Province, he must have had a controlling voice; as the Council never exceeded

twelve, and a number of its members had at no time been connected with any deliberate Assembly, nor any experience in debate, his influence therefore, and that of his associates on the Bench, could not be otherwise than great. The illness of the Chief Justice was of short duration, for he was at a meeting of Council two weeks before his death. His widow died at St. John, in 1825, at the residence of her son-in-law, the Hon. John Robinson, at that time Mayor of the City and Province Treasurer.

HON. JAMES PUTNAM.

When Mr. Putnam was appointed to the Council and Bench, he was in his sixtieth year. He was born in the "Old Colony of Massachusetts Bay," and graduated at Harvard. When the war broke out, he was following his profession at Worcester, and was one of the ablest lawyers in the Colony. Sabine says: "While the majority of the Bar took the side of the people, the Giants of the Law sided with the Crown."

John Adams, the first Vice-President of the United States, and its second President, studied law with Mr. Putnam, and resided in his family.

As the evacuation of Boston took place early in the war, most of the Massachusetts Loyalists went with the army to Halifax. Among them was Mr. Putnam, who was the last Attorney General of that Province appointed by the Crown. He was not one of the original grantees of land. The lot where he built his house and resided, he purchased December 13th, 1785, from John Sayre, jr., (son of the Rev. John Sayre) for £35; it was number thirty-six, east side of Dock street, the third from Union. At this time, and for many years after, this was the fashionable section of St. John. The corner lot was drawn by the Hon. George Leonard, and on it was erected one of the finest houses of that day; it was taken down about 1839. It was there Governor Carleton first resided, and as late as 1822, was the city residence of Governor Smyth. It stood some distance back from Dock street, with a fine lawn and terrace in front. The troops in those days lived on Fort Howe, and other places in Portland; the officers' mess rooms occupied the spot where the Old Brewery stood, and where Solomon Hersey erected the brick building now used as a paper warehouse.

The price paid by Judge Putnam at that time appears high, for

eleven years after, the Rev. John Beardsley, of Maugerville, sold Elias Hardy, Esq., M. P. P., one-half of the lot on which the "Fisher House," King street, stands, for 10s. The business section of St. John at first was at Lower Cove. For some years there was a strong rivalry between it and Upper Cove. In 1799, *The St. John Gazette* was printed in Brittain street, opposite the Lower Cove Slip, by Jacob S. Mott; he died in 1814, aged forty-one. The paper was continued for some time under the firm of Ann Mott & Son, Prince William street.

March 17th, 1786, Benedict Arnold purchased from Jedediah Fairweather, the second lot on the north side of Main street, from Charlotte street, for £50. It was there he built his store, and carried on business under the firm of Arnold & Hoyt. The store was burned in the autumn of 1788. The impression was, it was set fire to at the instance of the General, who had effected large insurance on his goods, most of which had been removed. Hoyt at this time had left the firm. The action for defamation of character, brought by Arnold against him, grew out of this fire.

Judge Putnam was the first of the Council and Bench who died; from failing health he had not attended Council for over a year. At the time of his death, October 23rd, 1789, he was in his sixty-fifth year. From that time to the appointment of Ward Chipman, sen., to the Bench, in 1809, there was no resident Judge of the Supreme Court at St. John. Mrs. Putnam survived her husband nine years. Their son Ebenezer, a merchant of the city, and Registrar of Deeds and Wills, died at the age of thirty-six.

The Putnam tomb is in the "Old Burial Ground." In it there are four generations of the family. Through the kindness of Mrs. Putnam, the body of the Rev. George Bisset, the first Rector of St. John, who died in March, 1788, three years after was removed to it. At a meeting of the Vestry of Trinity Church, held November 24th, 1791, the following resolution passed:

"Resolved, That the thanks of the Vestry be given to Mrs. Putnam for respect shown by her to the memory of the Rev. Mr. Bisset, deceased, the late worthy Rector of this Church, for removing and receiving his remains in her own tomb."

- Judge Putnam has no relatives living in New Brunswick.
- * Charles S. Putnam, Clerk of the Crown in the Supreme Court, who died at Fredericton in 1837, was his grandson. The latter has a son living in England, John M. Putman, Esq., Barrister,

*Reverend at St John
Reverendship with Esq. Putnam
1805*

Plowden Buildings, London. A daughter married the Rev. W. H. Shore, at one time in charge of St. Paul's Church, Portland. The Putnam house, Fredericton, is one of the historic edifices of that city; in it Sir Howard Douglas lived during the erection of the present Government House.

HON. ISAAC ALLAN.

Mr. Allan was a native of Trenton, New Jersey, and educated for the Bar. In the revolutionary war he at once sided with the Crown, and at its close held the rank of Lieut. Col. of the Third Battalion N. J. Volunteers. In Col. Allan's Regiment was Capt. Joseph Lee, father of the Hon. Thomas Carleton Lee, at one time Receiver General of New Brunswick. Capt. Lee has a grand and a great-grandson members of our Historical Society. In the same Regiment was Capt. Charles Harrison, uncle of the Hon. Charles and Canon Harrison. Their grandfather, Lieut. James Harrison, was Paymaster.

Col. Allan had a valuable property in Pennsylvania and New Jersey; this he lost. He came to this country with the Loyalists in 1783, and drew two lots in Parr Town, on the east side of Prince William street, the second and third from Princess, each with a frontage of fifty feet, and depth of two hundred. Having drawn a tract of land in York, adjoining Chief Justice Ludlow's, he sold his city lots in 1796 to Thomas Horsfield, Esq., for £10. To-day they are among the most valuable in St. John.

At the time of his appointment to the Bench, Col. Allan was in his forty-fourth year. It was at the Supreme Court, held at St. John, July 19th, 1785, that he took his seat on the Bench for the first time, after proclamation having been made and his commission read. He was present at the last held at St. John, February, 1787, and at the first in Fredericton, in May of the same year.

His son, Col. John Allan, many years one of the representatives of York, is yet living. The Hon. John C. Allan, the senior Assistant Justice of the Supreme Court, is the grandson of Judge Allan, and for a long time was a representative of York, and has been Speaker of the House. He was one of the first Mayors of Fredericton, and has held the offices of Solicitor and Attorney General. On the elevation of Judge Robert Parker to the Chief Justiceship, consequent on the resignation of Sir James Carter in 1865, Mr. Allan succeeded him.

Judge Isaac Allan has several great-grandchildren, the oldest (his namesake, Isaac Allan Jack) is a member of the St. John Bar. Judge Allan was one of the largest gentlemen on the Bench; he died October 12th, 1806, at the age of sixty-five, having held a Puisne Judgeship twenty-two years.

HON. JOSHUA UPHAM.

Mr. Upham was born in 1741, at Brookfield, Massachusetts Bay. His father was Jabez Upham, a physician and prominent citizen of that place; he died there at the age of forty-three, in 1760; his son Joshua graduated at Harvard three years after. At this time, the catalogue of the College was classified, not according to the intellectual attainments of the students, but to their social rank. The date of their father's commission as a Justice of the Peace secured not only a better room, but better attendance at the table. At the commencement of the war, Mr. Upham entered the British army, and rose to the rank of Colonel of Dragoons; he was in active service under Winslow, Arnold, and others. At its close he went to England with Lord Amherst, as one of his aides-de-camp, but shortly after came to this country.

Mr. Upham drew a lot in Carleton, opposite the Ludlow lots; he sold it in 1789 to Gabriel G. Ludlow, for £2. He settled in King's County, having obtained a tract of one thousand acres on the Hammond River, twenty-two miles from St. John, which he extensively cultivated. The Parish of Upham, in the County of King's, is called after the family.

Mr. Upham was appointed to the Bench, at the organization of the Supreme Court, November 25th, 1784. The first Court he was present at, was at Fredericton, July, 1787. Judge Upham, in 1807, at the request of his associates on the Bench, went to England to lay before the Government the claims of the Judges to an increase of salary. Having accomplished the object of his mission, and on the eve of returning, he died in 1808. When there, he enjoyed the friendship of many eminent personages, particularly of the Right Hon. Spencer Perceval, at that time Prime Minister. After the death of Judge Upham, Mr. Perceval sent to his family valuable presents; and for the education of his son, at that time only six years old, £100.

At the session of the New Brunswick Legislature of 1810, the following was passed:

"Whereas, The Honorable Justice Upham, now deceased, did, nearly at the close of his life, at great inconvenience and expense, leave his family and go to Great Britain for the purpose of soliciting an augmentation to the salary of the Judges, which was then much too small for their support; And whereas, There is good reason to believe, that principally by his solioitation and representations, the late addition was made, so necessary for the dignity and independence of the Judge; And whereas, The said Justice Upham closed his life in England shortly after the augmentation took place, and received no remuneration for his expense, or any compensation for his service;

"Therefore Resolved unanimously, The sum of two hundred pounds be granted Mrs. Mary Upham, the widow of the said Justice Upham, and also the further sum of one hundred pounds to Miss Elizabeth Upham, his eldest daughter."

The first wife of Judge Upham was a daughter of Col. John Murray, a distinguished Loyalist, and member of His Majesty's Council of Massachusetts Bay. Col. Murray died at St. John, August 30th, 1794, in his seventy-fifth year. His portrait is in the possession of his great-grandson, Mr. F. B. Hazen, of St. John. It is by Copley, the father of the late Lord Lyndhurst. Daniel Murray, one of the representatives of York in the first Provincial Assembly, was his son.

Judge Upham's wife died at New York in 1782, the last year of the war. His second wife was a daughter of the Hon. Joshua Chandler, of Connecticut, one of the chief landed proprietors of that Colony. In crossing the Bay of Fundy, to meet the Commissioners on Loyalist claims at St. John, the vessel was overtaken in a violent snowstorm, missed the harbor, and wrecked on Musquash Point on the night of March 9th, 1787. Mr. Chandler, with his son William, who had been a Captain in one of the Provincial Regiments, and two daughters (Mrs. Grant and Miss Elizabeth Chandler) perished from cold and exhaustion.

Mrs. Upham had six slaves, which she inherited from her father; one called Luke was convicted and executed at St. John, in the second year of the present century, for the murder of the girl West, on the "Old Westmorland Road," about a mile and a half from the city. He was a stalwart negro of the age of twenty-three. He denied the offence at first, but being hurriedly asked what he did with the knife, he replied, "Hid it under a stump, massa." This led to the finding of the knife, and proof of his guilt; after trial he admitted the crime. He frequently accompanied Judge Upham on his journeys to Fredericton, and remarked

to an old Scotchman, "If he thought master would sell him, he would kill him."

The Hon. Charles Upham, formerly President of the Massachusetts Senate, and member of Congress, now living at Salem, Mass., is a son of the Judge. The first wife of the Hon. John W. Weldon, Judge of the Supreme Court, was his daughter. Mrs. John Pagan, formerly of Richibucto, and now living at St. John with her son-in-law, Mr. Charles R. Ray, is also a daughter.

At the time of his appointment to the Bench, he was forty-three years of age, and at his death sixty-seven. He was the last of the Assistant Justices of 1784, and held a seat twenty-four years.

HON. JOHN SAUNDERS.

Mr. Saunders was a Virginia Loyalist of English descent. At the beginning of the revolution he raised a Troop of Horse at his own expense. The Regiment was commanded by Col. Simcoe. Stair Agnew, long one of the representatives of York, was one of its officers. At the close of the war, Mr. Saunders went to England, entered the Middle Temple, and commenced the practice of the law. Shortly after, he came to this Province, and resided at Fredericton. He was, in October, 1790, appointed to a seat on the Bench, vacant by the death of Judge Putnam—one year having passed before it was filled. At this time Judge Saunders was only thirty-six. It was four years after before he was appointed to a seat at the Council.

After holding the office of an Assistant Judge for thirty-two years, he was, in 1822, raised to the Chief Justiceship, consequent on the death of the Hon. Jonathan Bliss. This office Mr. Saunders held to 1834, a period of twelve years.

His son, the Hon. John Simcoe Saunders, has been a member of the Legislative Council for over forty years, and is now President. For twelve years he was Advocate General, and for three years, from 1845, was Provincial Secretary; for many years Mr. Saunders was Clerk of the Circuit, and of the Crown on the Circuit.

Chief Justice Saunders held a seat on the Bench forty-four years, and died at Fredericton ~~in the Fall~~ of 1834, at the age of eighty. 24 May 1834

HON. EDWARD WINSLOW.

Mr. Winslow was a Massachusetts Loyalist, and a descendant from the early Governors of that Colony. He too was a graduate

of Harvard, and from his social standing must have been one of the favorites of that University. When the war broke out, he sided with the Crown, and soon rose to the rank of Colonel. His father died at Halifax, in 1784, at the age of seventy-two.

Mr. Winslow was one of the original grantees of Parr Town; the lot he drew is on the west side of Germain street, nearly opposite where the first church stood. Although a member of the first Council of New Brunswick, he did not attain to a seat on the Bench until the death of Judge Allan, twenty-three years after his appointment to the Council.

When the Commissioners under the Jay Treaty met at St. Andrews, October 4th, 1796, to determine which was the St. Croix of the Treaty of 1783, Mr. Winslow was appointed Secretary to the Board. Over two years passed before its work was completed.

If his appointment to the first Council failed to obtain for him the first vacant Judgeship, it secured the Presidency and office of Commander-in-Chief on the death of President Ludlow. The expectation was, he would retain the office to the death or resignation of Governor Carleton. In view of the warlike attitude of the United States, and before the death of President Ludlow was known in England, the British Government had sent instructions to Major-General Martin Hunter to assume the Government, as Administrator and Commander-in-Chief, which he did on May 24th, 1808; consequently, President Winslow's tenure of office was less than four months.

The residence of Judge Winslow was at Fredericton, and there he died in 1815 at the age of seventy, having held a seat on the Bench eight years, and at the Council thirty-one. His son was the first Sheriff of Carleton County, and there a number of the family reside.

HON. JONATHAN BLISS.

The death of Chief Justice Ludlow, in November, 1808, was followed by the appointment of Attorney General Bliss to his seat. As over seven months passed between the death of the one and the elevation of the other, the assumption is, there were claimants for the office among the Associate Justices. At this time Mr. Bliss was in his sixty-seventh year, and had held the Attorney Generalship twenty-four years.

Like Putnam and Upham, he was a Massachusetts Loyalist, and, like them, one of the "Giants of the Law." When the

British troops in 1776 left Boston for Halifax, he, with others, accompanied them. It was not long before he went to London, where he remained until after the war. When there he belonged to the New England Club, composed of Massachusetts Loyalists. Among other members was Salters Sampson Blowers, who, in 1784 was appointed to the Attorney Generalship of Nova Scotia, and shortly after to the office of Chief Justice. There were intimacies formed during the days of the revolution which ripened with age. Of this Jonathan Bliss and Salters S. Blowers was a beautiful illustration. One of the sons of Chief Justice Bliss was called William Blowers Bliss, after the Chief Justice of Nova Scotia, and by him brought up, and in the end inheriting his large fortune.

When the Government of New Brunswick was formed, and the Supreme Court of Judicature established, Mr. Bliss was in London. In the summer of 1785 he was here, and took the Attorney Generalship, which to that time was held by Ward Chipman, whose appointment was temporary. Mr. Bliss was twelve years the senior of Mr. Chipman. For many years the residence of Attorney General Bliss was St. John. In 1792 he purchased from John Porteus, merchant, of London, for £350, the lot and house on the corner of King and Cross streets, where the brick store of Mr. William G. Lawton stands. Mr. Porteus was one of the Loyalists, and drew this lot. At the time of the purchase, Mr. Bliss was residing there; the occupant before him was General Benedict Arnold, who lived here at the time of the burning of his store at Lower Cove, in 1788.

The Chief Justice had four sons—John Worthington, Henry, William Blowers, and Lewis. John died in January, 1810, after an illness of three days, from a cold contracted from falling into the Creek while skating, at the age of nineteen. Henry and William B. studied law—the former in this Province, the latter at Halifax. Henry, shortly after, removed to London, where, for a number of years, he was agent for New Brunswick; he died there. William B. resided at Halifax, and at one time was a member of the Nova Scotia Legislature, and soon attained to a seat on the Bench. He died at Halifax two years ago, leaving a large fortune. He has two sons residing in England, Clergymen of the Established Church. He left three daughters—one married to Senator Odell, of Fredericton, one to Bishop Binney, of Nova

Scotia, and the third to Bishop Kelly, of Newfoundland. Lewis Bliss is living in England; in early life he was a clerk in the counting-house (at St. John) of John Black & Co.

In the first Assembly of New Brunswick, Attorney General Bliss was one of the representatives for the County of St. John; he was again returned at the election of 1795. For some years before his death he resided at Fredericton, where he died October 1st, 1822, at the age of eighty. His wife, the daughter of the Hon. John Worthington, of Springfield, Mass., died at St. John, April 19th, 1799, in her fortieth year. With her son, John Worthington, she is buried in the "Old Burial Ground." From the long and lucrative practice of Chief Justice Bliss, he left a large fortune to his sons. Long life, riches and honor was his portion.

HON. WARD CHIPMAN.

Mr. Chipman was a native of Massachusetts, and a graduate of Harvard. At the age of twenty-two, he went to Halifax at the evacuation of Boston, and from there to England, when, after remaining a year, he went to New York, and, to the close of the war, held appointments in connection with the military.

Mr. Chipman was not one of the original grantees of Parr Town. In 1786 he purchased from James Simonds, William Hazen and James White, the western portion of the grounds on which the Chipman house stands, with a frontage of two hundred feet and depth of three hundred, for £70. In this house, June 24th, 1794, the Duke of Kent held a levee, and in 1860 his grandson, the Prince of Wales, was entertained.

Mr. Chipman was the first Solicitor General, and for four months previous held the office of Attorney General; he was also Advocate General, as well as Clerk of the Circuits, and of the Crown on the Circuits. These offices he held to his appointment to the Bench. He was the first Recorder of St. John, holding the office to July, 1809, when Thomas Wetmore, Esq., Attorney General, was appointed. He was one of the representatives for the County of St. John in the first Parliament of New Brunswick.

At the Convention held at St. Andrews in 1796, under the Jay Treaty, to determine which was the St. Croix of the Treaty of 1783, Mr. Chipman was the agent for the Crown, with Thomas Barclay as Commissioner on the part of England. The American Commissioner was David Howal, Esq. By the terms of the Treaty,

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the two were to choose a third; if failing to agree, each was to propose one person, and of the two names so proposed, one was to be drawn by lot in the presence of the two Commissioners. They agreed on the choice of a third without recourse to the plan stated. The gentleman selected was Egbert Benson, Esq., a Judge of the Supreme Court of the State of New York—the British Commissioner thinking it better to select by mutual choice one known to him, although a citizen of the United States, than to leave the selection to chance. Judge Benson was the first Attorney General of the State of New York, and one of the three Commissioners appointed by the United States Government to act with the Commissioners appointed by Sir Guy Carleton, in the embarkation of the Loyalists to Nova Scotia, in 1783. He was one of the six representatives of New York to the first Congress. He died at Jamaica, Long Island, in 1833, at the age of eighty-seven. Judge Benson was the first President of the New York Historical Society.

The Commissioners held a number of meetings before their labors closed—David Howal, with James Sullivan, his associate, contending throughout most strenuously for the river Magagavadic as the St. Croix of the Treaty; on the other side, Mr. Barclay, with Ward Chipman, insisting on the Schoodiac as the true St. Croix. The umpire, at an early stage of the discussion, expressed himself satisfied that the British claim had been clearly established in favor of the Schoodiac as the St. Croix, and to the western branch as the main river. It was as to the source or head of the river the chief divergence arose—the British Commissioner maintaining that the river was to be followed to its most western source or spring, as described in the grant of King James to Sir William Alexander in the year 1621. Here the umpire differed, for he placed the source of the river at the mouth of the *easternmost* of the Schoodiac Lakes. This point is between five and six miles above the confluence of the Cheputnaticook with the main river, and on a meridian several miles to the eastward of the source of the Cheputnaticook.

The American Commissioner, Mr. Howal, proposed a compromise—the extreme northern source of the Cheputnaticook, or northern branch of the Schoodiac, as the source of the St. Croix. His object was to save to Massachusetts certain grants of land that had been made by that State, between the northern and western branches of the Schoodiac. As this placed the source of

the St. Croix on a meridian considerably to the *westward* of the point named as the source of that river by the umpire, it was accepted by the British Commissioner. The award was made at Providence, Rhode Island, October 25th, 1798.

The Commissioners ran the line due north to Mars' Hill, a distance of forty miles. At this point the British Commissioner claimed the line was to run west—the American contending it should run to the river Metis, a further distance north of over ninety-five miles, before taking its western departure. Their views were so widely diverse, that the location of the north-west angle was left for a future time, when the topography of the country would be better known. In 1814, by the Treaty of Ghent, provision was made for finding it, when Mr. Barclay was again the British Commissioner, with Ward Chipman as agent. At the time of Judge Chipman's death, ten years after, the problem remained unsolved.

His appointment to the Bench was in June, 1809, consequent on the death of Judge Upham. When Governor Smyth died, in March, 1823, Judge Chipman was sworn in President and Commander-in-Chief—the Hon. George Leonard, of Sussex, the senior member of the Council, declining the office from age, and from not having attended any of its meetings for years. Next to him in seniority was Col. Billop, of St. John; he, too, declined at first, but immediately decided to take the office, although, at this time, eighty-six years of age, and informed the Council he wished to be sworn in at St. John. To this they demurred, and Ward Chipman immediately took the oath of office. Col. Billop at once issued his proclamation as President of New Brunswick and Commander-in-Chief. Judge Chipman at once called the Council together, and by their advice issued a counter one. Col. Billop lost no time in bringing the question before His Majesty's Government; their decision was in favor, not only of his right to the office, but his right to be sworn in at his own house if he wished. At the same time, in view of its intention of sending out a successor to the late Governor Smyth at an early day, they declined making any change. Had Colonel Billop attended the session of Parliament of 1823, he would have been in Fredericton at the time of the Governor's death, and sworn in.

President Chipman did not long survive his appointment, for he died February 9th, 1824, during the sitting of the Legislature. He was the third President and fourth and last Commander-in-

Chief who died in office. He was buried in Fredericton, but in the summer following his body was placed in the "Old Burial Ground," St. John, and on the opening of the Rural Cemetery, many years after, removed there. An oil portrait of the Judge and of his wife is in the Chipman House. He was a gentleman of medium size, and full set. His favorite exercise was riding on horseback, and chiefly in the mornings. He left a valuable estate, a portion of which he got by marriage, in 1785, to the daughter of the Hon. William Hazen.

Mrs. Chipman survived her husband twenty-eight years; her birthplace was at Newburyport, Massachusetts Bay. With her parents she came to Portland Point, River St. John, when nine years old. The vessel in which she arrived sailed out of Boston harbor, June 17th, 1775, at the time the battle of Bunker Hill was going on. Her father was a merchant of Newburyport, and for years had commercial relations with James Simonds, who arrived here eleven years previous. If the day of leaving the old Colony of Massachusetts, in which she was born, has become historic, the day of her death is hardly less so, for she died at St. John, at the age of eighty-six, on the 18th May, 1852—the sixty-ninth anniversary of the landing of the Loyalists.

HON. JOHN MURRAY BLISS.

The Hon. Daniel Bliss, a Massachusetts Loyalist, and one of the first Council of New Brunswick, was the father of John Murray Bliss; he died in 1807, on his farm at Belmont, Sunbury, at the age of sixty. His wife was a daughter of Col. John Murray, and a sister of the first wife of Judge Upham. His son commenced the study of law with Jonathan Sewal, and finished his studies in the office of Jonathan Bliss. He followed his profession at Fredericton, and at one time represented York. For a number of years he was Solicitor General, holding the office to his appointment to the Bench, in 1816, consequent on the death of Judge Winslow. He was appointed to the Council the same year. At this time he was in his forty-sixth year, a gentleman of much dignity and fine personal appearance. When the Loyalists came here he was a youth of twelve; consequently, the closing scenes of the revolution, and the dark days which, for a time, it was the lot of the Loyalists to pass through in the morning of our Provincial history, would, through life, be ever present to his mind, for in

his boyhood days they would form the chief conversation in his father's household.

On the death of President Chipman in February, 1824, Judge Bliss was sworn in as Administrator and Commander-in-Chief, holding the office to the 17th August of the same year, when Sir Howard Douglas arrived as the third Governor of New Brunswick.

The King of the Netherlands having in 1829 accepted the office of Arbitrator, to settle the differences between Great Britain and the United States as to the boundaries of their respective possessions, the British Government appointed Sir Howard Douglas their Commissioner, and instructed him, that when leaving the Province, the Hon. William Black was to be sworn in as President and Commander-in-Chief. To this Judge Bliss, as senior Councillor, took exception, holding that, until the mandamus was received appointing Mr. Black, the office belonged to him. The reason for the British Government passing over the senior Councillor was entirely on public grounds. Chief Justice Saunders had reached an age when the duties of office could only with difficulty be discharged. Ward Chipman, the junior Justice, had been appointed to the mission with the Governor—an appointment to which no exception could be taken, as from his thorough knowledge of the subject, he had no equal for the office in the Province. If Judge Bliss was to assume the head of Government during the absence of Sir Howard Douglas, the administration of the law would devolve entirely on Judge Botsford. It is clear, then, no other course was left for the British Government to follow. The Presidency of Mr. Black continued two years and a half. Sir Howard Douglas never returned; he was succeeded by Sir Archibald Campbell in September, 1831.

Judge Bliss died when at St. John, August, 1834, at the age of sixty-three. His residence was on his estate at Belmont, the old home of his father. He has a number of grandchildren and other relatives in the Province, among the latter is his nephew, the Hon. L. A. Wilmot, late one of the Judges of the Supreme Court, and the first Lieut. Governor appointed to New Brunswick by the Government of Canada.

HON. EDWARD J. JARVIS.

The birthplace of Mr. Jarvis was St. John; here he studied law, and followed his profession. In 1822, in the absence of Ward

Chipman, jr., on public service, he was appointed to the office of Recorder. At this time he was thirty-three years of age. On the death of George Ludlow Wetmore, Esq., the Clerk of the House of Assembly, he was appointed to that office. The death of Chief Justice Bliss, in the fall of 1822, led to the elevation of Judge Saunders to that office; this was followed by the appointment of Mr. Jarvis to the vacant seat on the Bench. To no one, more than to himself, was the selection of Governor Smyth a surprise. The expectation of the Bar was, the first vacancy would be filled by the appointment of Solicitor General Botsford, who was not only sixteen years the senior of Mr. Jarvis, but Speaker of the House. Mr. Botsford, feeling that the Governor, in the appointment of Mr. Jarvis, had intentionally, as well as unfairly, passed over him, brought his claim before the British Government, through his friend, Sir James Kempt, then Governor of Nova Scotia. The result was the appointment of Judge Jarvis to an important position at the Island of Malta, and six years later to the Chief Justiceship of Prince Edward Island; this office he held to his death in 1852, at the age of sixty-three. Mr. Jarvis was the first native of the Province placed on the Bench.

Munson Jarvis, Esq., the father of the Judge, represented the County of St. John in the House of Assembly of 1801. He died October 7th, 1825, at the age of eighty-three. He had two brothers, Ralph and William Jarvis, many years merchants of the city.

Judge Jarvis has a son, a member of the medical profession, and daughter, residents of Prince Edward Island. Another son, a Clergyman of the Church of England, died a few years ago.

HON. WILLIAM BOTSFORD.

One of the agents appointed by Sir Guy Carleton, on behalf of the British Government, to locate the Loyalists, was Amos Botsford, Esq. Jointly with Thomas Barclay, Esq., he drew three lots on Union street; on one the Congregational Church stands. Mr. Botsford ultimately selected Sackville for his home. At the first election of members for the New Brunswick Legislature, he was chosen for Westmorland, and at every subsequent contest to the close of life, and of each Parliament was Speaker. He came to St. John for medical treatment in the summer of 1812, where he died on the 14th September, at the age of sixty-nine. His birth-place was Connecticut, and he graduated at Yale.

1852

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The wife of Mr. Botsford was a daughter of the Hon. Joshua Chandler. His son, William Botsford, was born in 1773; his birthplace was Connecticut, and of Yale he was a graduate. He studied law with Ward Chipman, and for some years followed his profession at St. John. When Gabriel G. Ludlow, on assuming the Government in 1803, resigned the office of Judge of the Court of Vice-Admiralty, Mr. Botsford was appointed. And from August 1811, to June 1815, he was the Recorder of St. John; at this time he was a resident of Westmorland.

When John Murray Bliss was appointed to the Bench in 1816, he succeeded him as the third Solicitor General. He was elected successor to his father in the representation of Westmorland, and three times chosen Speaker of the House—the two holding the office for thirty-four years.

The popular branch was not at all times in accord with General Smyth and his Council. Mr. Botsford, as its head, resisted every attempt to interfere with its rights; hence, between the Governor and the first Commoner there was not, at all times, that good feeling that might otherwise have existed. Mr. Botsford realized this when the vacant seat on the Bench was given to Mr. Jarvis, the Clerk of the House. This act of the Governor was so indefensible that the British Government lost no time in interposing. Mr. Botsford was sworn in as an Assistant Justice, April 2nd, 1823, Governor Smyth having died five days before. At this time Mr. Botsford was in his fiftieth year.

In the summer of 1845, Judge Botsford wrote Sir William Colebrook, then Governor of New Brunswick: "Being now in the seventy-third year of my age, I find my infirmities, especially that of deafness, have so increased, that, in justice to myself, and for the public interests, I ought to retire from public life. I, therefore, most respectfully beg leave to tender the resignation of my seat on the Bench, with such retired allowance as Her Majesty may be graciously pleased to direct." The Government accepted his resignation, and on December 20th, 1845, appointed George F. Street his successor.

At the session of the Legislature of 1846, the Lieut. Governor sent down the following message: "Her Majesty has been graciously pleased to accept the resignation of the Hon. William Botsford, the senior Assistant Justice of the Supreme Court, and in consideration of his long and faithful service, it is Her Majesty's

command that the Lieut. Governor should signify her intention, with their concurrence, to grant to Mr. William Botsford during his life, a superannuation allowance, to be charged to the 'Civil List Fund.'" The House, by a majority of one, declined acceding to the wish of Her Majesty, on the ground of objection to the initiation of a pension list in the Province. At the session following, the subject was again before the House, when a resolution was passed expressive of regret "That before Judge Botsford's resignation was accepted by the Government, and a successor appointed, the views of the House had not been ascertained."

Looking at the question at this distance of time, it is impossible to resist the conviction, that Judge Botsford had just grounds to complain; an exceptional vote might have been carried in his favor, coupled with the declaration that it was not to be a precedent for future action. The Government was clearly open to censure for having accepted his resignation, knowing it to be conditional, and appointing a successor, without being able to carry a vote, even with the prestige of Her Majesty's name. For once a departure might have been made; if not on the ground of the long and faithful service of the Judge, out of deference to the wish of their Sovereign.

The present Court House at St. John was opened by Judge Botsford, at the January Circuit of 1830. In his charge to the Jury, he congratulated the community on having such an edifice for the accommodation of the Courts of Justice, and expressed the hope the building might long stand as a monument of the public spirit of the people, and of the interest they take in the administration of justice, and that its walls would never be polluted by a partial and corrupt administration. In the same charge he added: "That laws, however faithfully administered, could not of themselves effectually secure the welfare and stability of a country, for religion and morality are the foundations of true greatness. They are the pillars upon which the British Constitution rests, and by which it is supported." Judge Botsford was an earnest and early advocate for the establishment of a Provincial Penitentiary, and of those changes in the criminal code which were enacted in the first third of the present century.

After reaching the patriarchal age of ninety-one, a life lengthened by over ten years beyond any of his predecessors, he died at Westcock, Parish of Sackville, May 8th, 1864, having survived

his wife fourteen years. Mrs. Botsford was a daughter of the Hon. William Hazen, and sister of Mrs. Chipman.

The family burial lot is in the Rural Cemetery of St. John, where both are interred. Among the monumental stones in it are those in memoriam of Amos Botsford, Joshua Chandler, and Col. John Murray—representative men in their day and generation.

One more of the twelve Judges, who held seats in His Majesty's Council, and added to Judicial, Legislative and Executive duties, remains to be noticed.

HON. WARD CHIPMAN.

If New Brunswick ever had a favored son, it was Ward Chipman, and if ever expectations were realized by relatives, it was in him. Born at St. John four years after the landing of the Loyalists, he graduated at Harvard thirty-five years after his father. On the completion of his legal studies, he went to London, where he perfected himself in the different branches of the profession, and on his return to St. John entered on the work of life. Shortly after this, his father was appointed to the Bench, leaving to him his extensive practice. He succeeded also to the office of Advocate General, and Clerk of the Circuit and Crown on the Circuit; and in 1815 to the Recordership of St. John. At the general election of 1820, consequent on the death of King George the Third, Mr. Chipman offered for the County of St. John for the first time, and was returned at the head of the poll: his colleagues were Andrew S. Ritchie, John M. Wilmot, and Charles Simonds.

On the appointment of Solicitor General Botsford to a seat on the Bench, in 1823, Mr. Chipman was appointed to that office, and to the Speakership of the House—holding the office of first Commo-er of New Brunswick at the time his father was President and Commander-in-Chief of the Province. If Ward Chipman, jr., was a favorite of the Crown, he enjoyed at this time, in a marked degree, the confidence of the people. When his father died, February 9th, 1824, he was appointed to his seat on the Bench. At this time he was in his fortieth year. The vacancy in the representation of St. John was filled by the return of Robert Parker, Esq.

Under the fifth article of the Treaty of Ghent, 1814, to determine "The north-west angle of Nova Scotia and the north-westernmost head of Connecticut River," Ward Chipman was appointed

by the British Government as agent, with his father, under Thomas Barclay, Esq., Commissioner. Numerous meetings were held and surveys made without arriving at the solution of the problem. The Treaty provided, that in the event of the two Commissioners failing to agree, the question was to be referred to a friendly Sovereign. In January, 1829, the King of the Netherlands accepted the office of Umpire—the British Government at once appointing Sir Howard Douglas, with Judge Chipman, to represent its interests. On this mission the Judge was absent in Europe nearly two years. The question involved to New Brunswick the title to over twelve thousand square miles of territory, and to the Imperial Government the right of a highway between Canada and her Maritime Colonies—the Americans contending for the highlands between the St. Lawrence and the St. John; the British for the highlands between the St. John and the head waters of the Penobscot and Kennebec, as the highlands of the Treaty of 1783. The award of the King was made at the Hague, January 10th, 1831. In it he says: "The arguments adduced on either side, and the documents exhibited in support of them, cannot be considered as sufficiently preponderating to determine a preference in favor of one of the two lines respectively claimed by the high interested parties as boundaries of their possessions, and that the nature of the difference, and the vague and not sufficiently determinate stipulations of the Treaty of 1783, do not permit to adjudge either of those lines to one of the said parties without wounding the principle of law and equity with regard to the other." The award was a compromise, and therefore disappointing to both parties. Instead of deciding in favor of one or the other, of the claim of *highlands* as the boundary, he substituted a *river*. There can be no doubt but the problem submitted for the decision of the King was one of great perplexity. Whether it would have been in any degree simplified, if the Umpire (Judge Benson) of the Treaty of 1794 had sided with the British Commissioner, that the *extreme western source or spring* of the St. Croix was the point for departure of the northern line, we cannot tell. As an inducement to Maine to accept the award, General Jackson, then President of the United States, was ready to advise Congress to make a grant to that State of \$1,000,000. Maine would listen to no arrangement, for her attitude was uncompromising and warlike. All further attempts to find the *true line*

from this time was abandoned. Maine, however, continued so restless and pressing in her demands for the settlement of the question, that in 1839 a crisis was reached, and a boundary must be found, either by a "Bargain worthy of nations, or traced by the point of the bayonet. For men stood facing each other with guns on their shoulders, upon opposite sides of fordable rivers thirty yards wide, and the discharge of a single musket would have brought on a war whose fires would have encircled the globe."

Fortunately, diplomacy was not one of the lost arts, for at this time the British Government, through Lord Ashburton, and the United States, through Daniel Webster, attempted the solution of the question on the basis of a *compromise*, when the unsolved problem of fifty-nine years was disposed of August 9th, 1842, by the Washington Treaty. Under it, New Brunswick received eight hundred and ninety-three more square miles than the award of the King of the Netherlands; conceding, however, to Maine the right to the navigation of the St. John. Whatever the gain to that State from that privilege, New Brunswick lost nothing; for to the commerce of the country, and to the trade of St. John, it has been followed by the most beneficial results.

Judge Chipman was in England at the time William the Fourth ascended the Throne, and in July, 1830, before his return to New Brunswick, had the honor of being presented to His Majesty, at the Court at St. James, by Sir George Murray, Secretary of State for the Colonies. The facilities of travel in those days were greatly behind the present, for the *St. John Courier*, of September 25th, says: "The Hon. Judge Chipman and lady arrived in town on Tuesday morning last, from London *via* the United States, after an absence from this Province of nearly two years. His Honor and lady came by land from Boston to St. Andrews, where they took the new coach, recently established between this city and the latter place, being the first passengers that ever travelled the route in a stage-coach."

The most exhaustive charge delivered by Judge Chipman was at the January Circuit of St. John, 1831—the first Court he presided over after his return. It covered over two columns of the leading paper of that day.

Before the union of Upper and Lower Canada, difficulties arose as to the proportion of import duties to which the former Province was entitled. Judge Chipman was one of the arbitrators for the settlement of the question.

In 1834, Chief Justice Saunders died, followed by the elevation of Judge Chipman to his seat. At this time he was the junior Justice. As a Judge, he withdrew two years before from the Legislative Council, with the other Puisne Judges. As Chief Justice he returned, and continued to preside over it to 1843. From impaired health he resigned the Chief Justiceship in the fall of 1850, when Judge Carter succeeded to the office. He did not long survive his retirement, for he died before the dawn of day on the 26th November, 1851. The last rising and setting sun which he beheld, was on the sixty-seventh anniversary of the organization of the Supreme Court of Judicature of New Brunswick, and of which, for over twenty-five years, he was a distinguished member—dying in the house in which he was born, in his sixty-fifth year.

In the Supreme Court Room at Fredericton, there is an oil painting of the Chief Justice, taken in 1838 at the request of the Bench and the Bar.

The Chief Justice was married March 24th, 1817, to a daughter of the late Henry Wright, Esq., Collector of Customs at St. John. Mrs. Chipman is yet living.

Chief Justice Chipman was the last of the Bench who discharged both judicial and legislative duties, and the last chosen by the Imperial Government to represent national interests.

Whatever diversity of gifts the twelve first Judges of New Brunswick possessed, or however varied their professional attainments, the voices of the historic past unite, that one and all, "Truly and indifferently administered justice, to the punishment of wickedness and vice, and to the maintenance of true religion and virtue." The testimony of one who has long and ably discharged Judicial duties is: "They were honorable, high-minded men, who, by their learning and sterling integrity, gave the Court a character which, he trusts, it will ever be the ambition of their successors, to the best of their ability, to maintain." Of them it can be said, they were men honored in their generation, and the leaders of their time. Spotless each received the Ermine; spotless each laid it down. Their motto through life was the old historic one, "THE BIBLE AND THE CROWN."

SUPREME COURT OF NEW BRUNSWICK.

CHIEF JUSTICES.

1784, Nov. 25, George Duncan Ludlow.
 1809, June 28, Jonathan Bliss.
 1822, October 19, John Saunders.
 1834, September 29, Ward Chipman.

1851, January 8, James Carter. *died March 10*
 1865, September 22, Robert Parker.
 1865, Nov. 30, William Johnston Ritchie.

ASSISTANT JUSTICES.

1784, November 25, James Putnam.
 " " " Isaac Allan.
 " " " Joshua Upham.
 1790, October 20, John Saunders,
vice Putnam.
 1807, July 2, Edward Winslow,
vice Allan.
 1809, June 28, Ward Chipman,
vice Upham.
 1816, July 9, John Murray Bliss,
vice Winslow.
 1822, October 19, Edward J. Jarvis,
vice Saunders.
 1823, April 2, William Botsford,
vice Jarvis.
 1825, March 17, Ward Chipman,
vice Chipman.
 1834, July 12, James Carter,
vice Chipman.

1834, October 6, Robert Parker,
vice Bliss.
 1845, December 20, George F. Street,
vice Botsford.
 1851, January 8, Lemuel Allan Wilmot,
vice Carter.
 1854, May 1, Neville Parker,
Additional Judge.
 1855, Aug. 17, William Johnston Ritchie,
vice Street.
 1865, September 22, John C. Allan,
vice R. Parker.
 1865, November 30, John W. Weldon,
vice Ritchie.
 1868, October, Charles Fisher,
vice Wilmot.
 1870, May 25, A. Rainsford Wetmore,
vice N. Parker.

Students of the Law

Attorney Gen. Wetmore
 George Ludlow Wetmore
 Henry Bliss S. & S.
 S. B. Bliss and Judge
 William Minchin
 C. P. Wetmore
 A. R. S. Wetmore
 Edwin B. Smith
 Samuel Andrews
 J. R. Wetmore
 G. F. H. Minchin

Ward Chipman

Robert Parker
 Neville Parker
 Charles S. Putnam
 John Thomas Murray
 D. Ludlow Robinson

C. J. Peter Maxwell Miss B.
 Cornell